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Federal Communications Commission

DA 97-927

DISPATCH

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations.  
(New Martinsville, West Virginia)

MM Docket No. 97-129  
RM-9076

NOTICE OF PROPOSED RULE MAKING

Adopted: April 30, 1997;

Released: May 9, 1997

Comment Date: June 30, 1997

Reply Comment Date: July 15, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making and supplement filed by Seven Ranges Radio Company, Inc., ("petitioner"), proposing the allotment of Channel 222A at New Martinsville, West Virginia, as potentially the community's third local FM transmission service. Petitioner states its intention to apply for the channel, if allotted.

2. Initially, petitioner requested the allotment of Channel 222A at New Martinsville, with cut-off protection, to eliminate the mutual exclusivity between the two applicants for Channel 258A at New Martinsville.<sup>1</sup> However, because there are no alternate Class A channels available in the event there are additional expressions of interest, petitioner filed a supplement expressing an interest in the allotment even if cut-off protection could not be afforded. In support of its proposal, petitioner states that New Martinsville (population 6,705),<sup>2</sup> is the county seat of Wetzel County (population 19,258) and serves as a trading center for Tyler County, West Virginia, and portions of Monroe County, Ohio (population 15,407), including the nearby communities of Paden City (population 2862), Sistersville (population 1,797) and Middlebourne (population 922), West Virginia. All of these communities, except Middlebourne, are located in the flood plain

<sup>1</sup> We note that at the present time, there is no basis upon which to either designate the applications for a comparative hearing, or to otherwise resolve the mutually exclusive applications. See Bechtel v. Federal Communications Commission, 10 F.3d 875 (D.C. Cir. 1993).

<sup>2</sup> All population figures are taken from the 1990 U.S. Census.

of the Ohio River (which is the border between West Virginia and Ohio). Therefore, depending upon the exact tower location, they would all be within the city grade contour of Channel 222A. Petitioner further states that Station WETZ(AM), a daytime-only station, and Station WETZ-FM, a Class A station, are currently licensed to the community.

3. We believe that the proposal warrants consideration since it could potentially provide New Martinsville, West Virginia, with its third local FM transmission service. An engineering analysis has determined that Channel 222A can be allotted to New Martinsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) south to avoid a short-spacing to the licensed site of Station WWHC(FM), Channel 222A, Oakland, Maryland.<sup>3</sup> Since New Martinsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In the event that there are no additional expressions of interest for a Class A channel at New Martinsville, we shall also propose to allow petitioner to amend its application for Channel 258A at New Martinsville to specify operation on Channel 222A, with cut-off protection, to eliminate the mutual exclusivity between the two applicants.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
New Martinsville, West Virginia	258A, 280A	222A, 258A, 280A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 30, 1997, and reply comments on or before July 15, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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<sup>3</sup>The coordinates for Channel 222A at New Martinsville are North Latitude 39-34-38 and West Longitude 80-51-16.

Thomas P. Taggart, Esq.  
P.O. Box 374  
St. Marys, West Virginia 26170  
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

**APPENDIX**

MM Docket No. 97-129  
RM-9076

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.